IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR
&
THE HONOURABLE MR. JUSTICE T.R.RAMACHANDRAN NAIR

MONDAY, THE 17TH SEPTEMBER 2007 / 26TH BHADRA 1929

RCRev..No. 296 of 2005

RCA.5/2000 OF ADDL.DISTRICT COURT (ADCHOC)-II, PATHANAMTHITTA
RCP.8/1998 OF MUNSIFF COURT, THIRUVALLA
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REVISION PETITIONER/(APPELLANT/CR.PETITIONER):

JOHN M.VARGHESE,
PROPRIETOR, M/S. MELAM PARAMBIL M.V. JOHN AND SONS
MARKET ROAD, PALIAKKARA MURI, THIRUVALLA VILLAGE.

BY ADV. SRI.K.P.DANDAPANI (SR.)

RESPONDENTS: (RESPONDENTS/PETITIONERS):
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1. ROY K.GEORGE, AGED 61 YEARS,
R/O. KALLOOR VEEDU, PALIAKKARA MURI,
THIRUVALLA VILLAGE.

2. JACOB KOSHY, AGED 55 YEARS,
R/O. KALLOOR VEEDU, PALIAKKARA MURI,
THIRUVALLA VILLAGE.

3. MATHEW KOSHY, AGED 49 YEARS,
R/O. KALLOOR VEEDU, PALIAKKARA MURI,
THIRUVALLA VILLAGE.

BY ADV. SRI.N.N.SUGUNAPALAN (SR.) - R1 & R2
SRI.K.U.PAULOSE (KAIPPILINGATTIL)

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 17/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

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K.BALAKRISHNAN NAIR &

T.R.RAMACHANDRAN NAIR, JJ.

R.C.R. NO.296 OF 2005

Dated 17th September, 2007.

ORDER

Balakrishnan Nair, J.

The revision petitioner is the tenant. The respondents are the landlords. The Rent Control Petition was filed under Sections 11(2)(b), 11 (3) and 11(4)(ii), (iii) & (iv) of the Kerala Buildings (Lease and Rent Control) Act (hereinafter referred to as "the Act"). The Rent Controller allowed eviction under Sections 11(3) and 11(4)(iii). The petitioner appealed. The appellate authority affirmed the order of the Rent Controller. Hence this revision, challenging the appellate judgment in R.C.A.No.5/2000.

2. The brief facts of the case are the following: The petition schedule building belonged to the father of the landlords. They got it under a will executed on 30.4.1996 by their father, who died later. The 1st petitioner is an Engineer employed in a company called Marshel and Sons. His wife is unemployed and their children are studying. The 2nd petitioner is working in

Central Industrial Security Force under the Government of India. He proposes to take voluntary retirement and commence a business at Thiruvalla. The 3rd petitioner, who is a graduate in Mechanical Engineering, is working in Merchant Navy. His wife is a Civil Engineer. The three brothers want to start an Automobile Service Centre and Automobile Spare-parts Shop in the petition schedule building. They have the necessary resources for making the investment. The tenant has defaulted to pay the rent for the last one year. By using the premises as a godown, its utility has been reduced. The tenant has other buildings in his possession. There are suitable buildings lying vacant in the locality also. On the above grounds, the R.C.P was filed.

3. The tenant filed objection denying all the allegations against him. He contended that no rent is in arrears. The claim of bona fide need put forward by the landlords is unfounded. All of them are well placed and therefore, their coming to Thiruvalla and starting a business is only a ruse to get the building evicted. There was a negotiation between the landlords and the tenant for selling the building to the tenant. Since there was no agreement on the price, the sale did not take place. Immediately after the negotiation failed, the R.C.P was filed. Before the Rent Control Court Exts.A1 to A8 were marked from the side of the landlords. Ext.B1 was

marked from the side of the tenant. Pws. 1 to 3 were examined from the landlords' side and the tenant was examined as CPW1. After considering the evidence on record, the petition was allowed under Sections 11(3) and 11(4)(iii) of the Act. Those findings were attacked in the appeal, which was also dismissed.

4. The learned counsel for the revision petitioner submitted that the finding regarding the bona fide need is untenable and is liable to be interfered with. He pointed out that all the landlords are well placed. Coupled with that there was a negotiation for the sale of the property. When these facts are taken together, the need projected for starting the business cannot be treated as a bona fide need. According to the learned counsel for the revision petitioner, these two aspects were considered separately by the appellate authority. If the impact of those two facts was taken together, the result would have been different, it is submitted. We feel that well placed persons can very well decide to come to their native place and start a business. If the property cannot fetch a proper price, the owner can decide to put it for better use, by starting a business there. There is nothing unusual about it. Therefore, the contentions of the learned counsel for the revision petitioner regarding lack of bona fides in the claim of the landlords cannot be accepted. The learned counsel further attacked the

findings under the 2nd proviso to Section 11(3) of the Act. It is not in dispute that the tenanted building is only used for storing snowcem. It is sold from the nearby shop of the tenant. The total turnover of sale of snowcem is Rs.30 lakhs. The tenant while in the box deposed that only 1% commission is received from the sale of snowcem. The gross earning from the sale of snowcem is Rs.30,000/-. Even if the expenses connected with the sale are not deducted, still the same is only a pittance and therefore, it cannot be said that the tenant is depending on the said income for his livelihood.

5. Regarding the second limb of the second proviso to Section 11(3) also, the appellate authority found that there are rooms available in the locality. The learned counsel for the revision petitioner pointed out that there is no specific finding on this point in the appellate judgment. But, we feel that once the finding under the first limb of the second proviso to Section 11(3) is against the petitioner, the said point is of no consequence.

6. Regarding the finding under Section 11(4)(iii), we notice that admittedly the petitioner has got four rooms adjacent to the tenanted premises. There is mention about other rooms in his possession also. But, regarding the four rooms, the possession of which is admitted by the petitioner, the appellate authority found that the same will be sufficient to

stock the snowcem now stocked in the tenanted premises. The said finding is arrived at, adverting to the fact that the tenant failed to adduce evidence to show that the rooms admittedly in his possession are not sufficient for stocking the snowcem also. The learned counsel for the petitioner in this context prayed that the matter may be remitted, so that the petitioner can take out a commission and show that there is no space in the four rooms for stocking the snowcem. We feel that the order of remand should not be made for curing a lacuna in the case of the tenant. We are of the view that the concurrent findings of the authorities below under Sections 11(3) and 11 (4)(iii) cannot be disturbed by this Court under Section 20 of the Act.

In the result, the Rent Control Revision fails and it is dismissed.

K.BALAKRISHNAN NAIR, JUDGE.

T.R.RAMACHANDRAN NAIR, JUDGE.

Nm/